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February 24, 2023

By FedEx

The Honorable Kevin McCarthy
Speaker
U.S. House of Representatives
2468 Rayburn House Office Building
Washington, DC 20515

The Honorable Charles E. Schumer
Senate Majority Leader
U.S. Senate
322 Hart Senate Office Building
Washington, DC 20510

The Honorable Steve Scalise
House Majority Leader
U.S. House of Representatives
2049 Rayburn House Office Building
Washington, DC 20515

The Honorable Mitch McConnell
Republican Leader
U.S. Senate
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Hakeem Jeffries
Democratic Leader
U.S. House of Representatives
2433 Rayburn House Office Building
Washington, DC 20515

Re: <u>January 6, 2021 Capitol Grounds Surveillance Video</u>

Dear Congressional Leadership:

This firm represents a coalition of news organizations (the "Press Coalition") that have regularly reported on the events of January 6, 2021 and have intervened in well over 100 federal prosecutions to seek public access to videos of the Capitol riot.[1] I write on their behalf to urge you to provide access to all closed-circuit camera footage recorded on January 6, 2021, inside the United States Capitol and on its surrounding outside grounds, on Capitol surveillance cameras (the "CCTV videos") as shown to Fox News host Tucker Carlson and his team.

[1] The Press Coalition consists of Advance Publications, Inc., American Broadcasting Companies, Inc. d/b/a ABC News, Axios Media Inc., Cable News Network, Inc., CBS Broadcasting Inc. o/b/o CBS News, The E.W. Scripps Company, Gannett Co., Inc., Los Angeles Times Communications LLC, POLITICO LLC, and Pro Publica, Inc.

As you know, during the February 20, 2023 episode of "Tucker Carlson Tonight," Mr. Carlson announced that he and his colleagues have received "unfettered" and exclusive access to "44,000 hours" of Capitol surveillance footage and will soon begin reporting on that footage. We understand that the Speaker of the House of Representatives, or members of his staff, have been providing this access to Mr. Carlson's team.

The incredible public interest in understanding what transpired on January 6 crosses party lines. The Speaker himself has recently observed that "the American public should actually see all [that] happened instead of a report that's written [on] a political basis." *Speaker McCarthy's Second News Conference of the 118th Congress*, https://www.youtube.com/watch?v=p8POtn0buDo at 11:05-11:14. The Speaker also explicitly recognized the overriding public interest in disclosure: "I was asked in the press about these tapes, and I said they do belong to the American public. I think sunshine lets everybody make their own judgment." *See In Sharing Video With Fox Host, McCarthy Hits Rewind on Jan. 6*, N.Y. Times (Feb. 22, 2023), https://www.nytimes.com/2023/02/22/us/politics/tucker-carlson-jan-6-mccarthy.html.

The Press Coalition agrees with the Speaker. Now that the CCTV videos have been released to one member of the news media – one whose program is categorized by its own network as opinion programming – they must be released to the rest of the news media as well. *See Anderson v. Cryovac, Inc*., 805 F.2d 1, 9 (1st Cir. 1986) (the government "may not selectively exclude news media from access to information otherwise made available for public dissemination"); *Boardman v. Inslee*, 978 F.3d 1092, 1098 (9th Cir. 2020) ("[T]he First Amendment forbids a state from discriminating invidiously among viewpoints in the provision of information within its control."). Without full public access to the complete historical record, there is concern that an ideologically-based narrative of an already polarizing event will take hold in the public consciousness, with destabilizing risks to the legitimacy of Congress, the Capitol Police, and the various federal investigations and prosecutions of January 6 crimes.

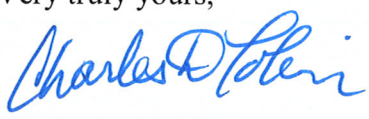
To aid the public in understanding these events, news organizations in this Press Coalition have tirelessly pursued access to footage submitted in the prosecutions of riot participants. On May 14, 2021, in response to a motion filed by the Press Coalition, Chief Judge Beryl A. Howell of the U.S. District Court for the District of Columbia issued a Standing Order outlining the process for release of these videos, and in doing so acknowledged "[t]he significant public and media interest in the numerous criminal cases arising from the January 6, 2021 violent breach of the United States Capitol (the 'Capitol Cases'), for which the parties are routinely submitting video exhibits to the Court for use in pretrial proceedings." *See* Standing Order No. 21-28 at 2 (D.D.C. May 14, 2021).

Through its work in the courts, the Press Coalition has obtained a number of CCTV videos. While the Department of Justice initially objected in some instances to release of CCTV videos, it has stopped opposing the release of CCTV video exhibits since the Chief Judge overruled its objections in *United States v. Torrens*, 560 F. Supp. 3d 283 (D.D.C.

2021). In her decision ordering release of the CCTV videos, the Chief Judge noted that "the areas of the Capitol in [those] videos are generally open to visitors taking public tours," and that any asserted security risk was "undercut by the already extensive release of [CCTV] footage from the Capitol." *Id.* at 294. Since the Chief Judge issued that decision in September 2021, the District Court has, without incident, released hundreds more CCTV videos to the press and public. *Video Evidence Shown in the Capitol Insurrection Criminal Cases*, ProPublica (July 27, 2021), https://projects.propublica.org/jan-6-video-evidence/ (compiling videos provided to the Press Coalition by orders of the Court).

Thank you for your prompt consideration of this important and time-sensitive request. If you would like to discuss this matter further, including the logistics of accessing these videos, please do not hesitate to contact me at tobinc@ballardspahr.com.

Very truly yours,



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